

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

10-CR-219-S

TONAWANDA COKE CORPORATION

Defendant.

GOVERNMENT'S MOTION FOR AN IMMEDIATE HEARING

THE UNITED STATES OF AMERICA, by and through its attorney, James P. Kennedy, Jr., United States Attorney for the Western District of New York, and Jeffrey H. Wood, Acting Assistant Attorney General for the United States Department of Justice, Environment and Natural Resources Division, and the undersigned Assistant United States Attorney and Trial Attorney, respectfully moves this Court to schedule an immediate hearing in regards to the violation petition filed by the Probation Department against defendant Tonawanda Coke Corporation ("Tonawanda Coke"). *See* Dkt. #365.

BACKGROUND

On March 19, 2014, the Court sentenced Tonawanda Coke to a term of probation of five years, ordered Tonawanda Coke to fund two community service projects not to exceed \$12,200,000, and imposed a \$12,500,000 criminal fine to be paid over five years and a special assessment of \$5,600. *See* Dkt. #281. As part of Tonawanda Coke's probationary sentence, the Court ordered Tonawanda Coke not to commit another federal, state, or local crime. *See id.* On August 23, 2018, this Court issued a summons returnable on September 4, 2018, in response to a Petition for Offender under Supervision ("Petition") filed by the Probation

Department. *See* Dkt. #365. The Petition outlines significant areas of environmental noncompliance by Tonawanda Coke, which includes continuous violations of the 20% opacity limit every day since May 2, 2018 and unregulated emissions of coke oven gas, a listed hazardous air pollutant.

ARGUMENT

The government moves this Court to set an immediate hearing so the Court can promptly hear evidence of the violations committed by Tonawanda Coke and determine an appropriate sentence. If the Court does find that Tonawanda Coke has violated its terms of probation, the government will be requesting that Tonawanda Coke immediately cease operations until it can comply with the law. This has been the position of the New York State Department of Environmental Conservation (NYS-DEC), which on July 20, 2018, issued a Cease and Desist Order, which Tonawanda Coke has now challenged. Moreover, on August 31, 2018, the government received a letter from NYS-DEC Commissioner Basil Seggos, outlining the position of the agency for the Court. A copy of that letter is attached hereto as **Exhibit 1**. Additionally, on September 1, 2018, at approximately 7:30 p.m., the government received several photographs from a concerned citizen showing the ongoing opacity violations at Tonawanda Coke. Attached as **Exhibit 2** are the photographs received by the government on September 1, 2018. Most recently, last night the government learned of several reports of a fire at Tonawanda Coke, during which fire personnel were restricted access to the site. *See* Buffalo News, *Firefighters initially held back from Tonawanda Coke blaze, fire chief says*, September 4, 2018, available at <https://buffalonews.com/2018/09/03/fire-companies-respond-to-reports-of-blaze-at-tonawanda-coke/>.

The government is deeply troubled by the conduct of Tonawanda Coke. During the sentencing phase of this case, the government argued that Tonawanda Coke indiscriminately poisoned an entire community for decades and needed to be punished accordingly. This Court imposed a substantial sentence on Tonawanda Coke, yet, despite that, the company is again acting in flagrant disregard of the environmental laws and regulations. Because of its actions, Tonawanda Coke is again jeopardizing the health and wellbeing of citizens living near the plant at risk. This cannot be tolerated.

CONCLUSION

For the foregoing reasons, the government respectfully moves for the scheduling of an immediate probation violation hearing.

DATED: Buffalo, New York, September 4, 2018.

Respectfully submitted,

JAMES P. KENNEDY, JR.
United States Attorney

S/ AARON J. MANGO

BY:

AARON J. MANGO
Assistant U.S. Attorney
United States Attorney's Office
Western District of New York
138 Delaware Avenue
Buffalo, New York 14202
(716) 843-5882
aaron.mango@usdoj.gov

PATRICK DUGGAN
Trial Attorney
United States Department of Justice
Environmental Crimes Section
601 D Street, NW
Washington, DC 20004
(202) 305-0366
patrick.duggan@usdoj.gov